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Attorneys for Defendant and Counterclaimant
INFINEON TECHNOLOGIES NORTH
AMERICA CORP.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GREGORY BENDER,

Plaintiff,

v.

INFINEON TECHNOLOGIES NORTH
AMERICA CORP., a Delaware
corporation, et al.,

Defendant and
Counterclaimant.

Case No. C 09-02112 JW

**DECLARATION OF DANIEL R.
FOSTER IN SUPPORT OF INFINEON
TECHNOLOGIES NORTH AMERICA
CORP.'S MOTION TO STRIKE
BENDER'S INFRINGEMENT
CONTENTIONS OR COMPEL
INFRINGEMENT CONTENTIONS
THAT COMPLY WITH PATENT L.R.
3-1**

Date: Tuesday, March 16, 2010

Time: 10:00 a.m.

Courtroom: 2, 5th Floor

Judge: Hon. Howard R. Lloyd

I, Daniel R. Foster, declare:

1. I am a member of the State Bar of California and a partner at McDermott Will & Emery LLP, counsel of record for Defendant Infineon Technologies North America Corp. ("Infineon") in the above-captioned matter. I submit this declaration pursuant to Civil L.R. 7-2(d) and 7-5 in support of Infineon's Motion to Strike Bender's Infringement Contentions or Compel Infringement Contentions that Comply with Patent L.R. 3-1. I have personal knowledge of the

1 facts set forth in this declaration and, if called to testify as a witness, could and would do so
2 competently.

3 2. Attached hereto as Exhibit A is a true and correct copy of the Order Denying
4 Defendant's Motion to Strike and Granting Defendant's Motion to Compel, dated February 1,
5 2010, entered as Docket No. 45, in Northern District of California Civil Case Number 3:09-cv-
6 01149-MMC, *Bender v. Advanced Micro Devices, Inc.*

7 3. Attached hereto as Exhibit B is a true and correct copy of the Order Granting in
8 Part Defendant's Motion to Compel, dated November 13, 2009, entered as Docket No. 37, in
9 Northern District of California Civil Case Number 5:09-cv-01249-RMW, *Bender v. International*
10 *Business Machines Corp.*

11 4. Attached hereto as Exhibit C is a true and correct copy of the Second Discovery
12 Order, dated October 29, 2009, entered as Docket No. 44, in Northern District of California Civil
13 Case Number 4:09-cv-01155-CW, *Bender v. Intersil Corp, et al.*

14 5. Attached hereto as Exhibit D is a true and correct copy of the Order Granting
15 Defendant's Motion to Compel Infringement Contentions that Comply with Patent Local Rule 3-
16 1 and Denying Defendant's Motion to Strike, dated February 6, 2010, entered as Docket No. 46,
17 in Northern District of California Civil Case Number 3:09-cv-01144-SI, *Bender v. Micrel, Inc.*

18 6. Attached hereto as Exhibit E is a true and correct copy of Cirrus Logic's Notice of
19 Motion and Motion to: (1) Compel Infringement Contentions that Comply with Patent L.R. 3-1,
20 and (2) Relieve Cirrus Logic of Certain Discovery Obligations Pending Service of Compliant
21 Infringement Contentions, dated November 4, 2009, entered as Docket No. 21, in Northern
22 District of California Civil Case Number 5:09-cv-01251-RMW, *Bender v. Cirrus Logic, Inc.*

23 7. Attached hereto as Exhibit F is a true and correct copy of Freescale's Notice of
24 Motion and Motion to: (1) Compel Infringement Contentions that Comply with Patent L.R. 3-1,
25 and (2) Relieve Freescale of Its Discovery Obligations Pending Service of Compliant
26 Infringement Contentions, dated September 23, 2009, entered as Docket No. 28, in Northern
27 District of California Civil Case Number 4:09-cv-01156-PJH, *Bender v. Freescale*
28 *Semiconductor, Inc.*

1 8. Attached hereto as Exhibit G is a true and correct copy of Maxim's Notice of
2 Motion and Motion to: (1) Compel Infringement Contentions that Comply with Patent L.R. 3-1,
3 and (2) Relieve Maxim of Certain Discovery Obligations Pending Service of Compliant
4 Infringement Contentions, dated October 16, 2009, entered as Docket No. 24, in Northern District
5 of California Civil Case Number 3:09-cv-01152, *Bender v. Maxim Integrated Products, Inc.*

6 9. Attached hereto as Exhibit H is a true and correct copy of the Transcript from the
7 Case Management Conference held on July 16, 2009 in Northern District of California Civil Case
8 Number 3:09-cv-01140-WHA, *Bender v. Exar Corp.*

9 10. Attached hereto as Exhibit I is a true and correct copy of the *ex parte*
10 reexamination certificate for United States Patent Number 5,103,188, dated July 28, 2009.

11 11. Attached hereto as Exhibit J is a true and correct copy of United States Patent
12 Number 5,103,188, issued April 7, 1992 (the "188 Patent").

13 12. Attached hereto as Exhibit K is a true and correct copy of Plaintiff Gregory
14 Bender's Infringement Contentions, served on December 28, 2009.

15 13. Attached hereto as Exhibit L is a true and correct copy of Plaintiff Gregory
16 Bender's Infineon Technologies North America Corp. Claim Charts for U.S. Patent No.
17 5,103,188, served on February 7, 2010.

18 14. Attached hereto as Exhibit M is a true and correct copy of Plaintiff Gregory
19 Bender's list of Infineon Accused Instrumentalities, served on December 28, 2009.

20 15. Attached hereto as Exhibit N is a true and correct copy of an excerpt from the file
21 history of the '188 Patent, titled "Remarks" and submitted by Gregory Bender on June 26, 1990.

22 16. Attached hereto as Exhibit O is a true and correct copy of a National
23 Semiconductor article, numbered OA-30 and titled "Current vs. Voltage Feedback Amplifiers,"
24 which Bender's counsel emailed me on February 7, 2010.

25 17. Attached hereto as Exhibit P is a true and correct copy of a National
26 Semiconductor article, numbered OA-31 and titled "Current Feedback Amplifiers," which
27 Bender's counsel emailed me on February 7, 2010.
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1 18. On January 27, 2010, I, along with my colleagues Christopher Bright and David
2 Chase, met and conferred with counsel for Plaintiff Gregory Bender, David Kuhn, who was also
3 joined by Steven Kuhn, regarding deficiencies in Bender's infringement contentions. At the
4 conclusion of the meet and confer, Bender's counsel stated that they would let me know if Bender
5 would supplement or amend his infringement contentions.

6 19. On February 2, 2010, I sent an email to Bender's counsel asking of Bender
7 planned to supplement his infringement contentions and, if so, when Infineon could expect to
8 receive supplemental or amended infringement contentions from Bender.

9 20. On February 3, 2010, Plaintiff's counsel, David Kuhn, sent me an email stating
10 that he was "assembling data and information."

11 21. On February 7, 2010, I sent an email to Plaintiff's counsel, David Kuhn, stating
12 that Infineon had still not received any information from Bender in response to the parties'
13 January 27, 2010 meet and confer.

14 22. Later February 7, 2010, David Kuhn emailed me revised infringement claim charts
15 containing only minor changes, two articles from National Semiconductor, and a diagram of an
16 exemplary Intersil amplifier.

17 23. On February 8, 2010, I emailed David Kuhn to inform him that while Infineon
18 appreciates Bender's offer of the materials sent on February 7, 2010, the materials do not identify
19 what specifically Bender is accusing in Infineon's products and that the only change from the
20 original infringement contentions served on December 28, 2009 was cutting and pasting parroted
21 claim language describing each claim element. I further stated that in order to avoid further delay
22 in getting this issue resolved, Infineon would file on February 9, 2010 a motion to strike Bender's
23 infringement contentions or to compel infringement contentions that comply with Patent Local
24 Rule 3-1.

25 24. To date, I have not received any further supplement from Bender's counsel.
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1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct. Executed on this 9th day of February, 2010 at
3 Irvine, CA.

4
5 By: /s/ Daniel R. Foster
6 Daniel R. Foster
7 Attorney for Defendant
8 INFINEON TECHNOLOGIES
9 NORTH AMERICA CORP.
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McDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
WASHINGTON D.C. - PALO ALTO - IRVINE

CERTIFICATE OF SERVICE

I am over the age of eighteen years and not a party to the within-entitled action. My business address is 18191 Von Karman Avenue, Suite 500, Irvine, CA 92612. I served a copy of the following document(s) as follows:

DECLARATION OF DANIEL R. FOSTER IN SUPPORT OF INFINEON TECHNOLOGIES NORTH AMERICA CORP.'S MOTION TO STRIKE BENDER'S INFRINGEMENT CONTENTIONS OR COMPEL INFRINGEMENT CONTENTIONS THAT COMPLY WITH PATENT L.R. 3-1



I electronically filed the with the Clerk of the Court using the CM/ECF system



By transmitting via electronic mail the document(s) listed above to the email addresses set forth below on this date



By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Menlo Park, California addressed as set forth below.



By Personal Service: I served a true copy to each person[s] named at the address[es] shown.



By Federal Express: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for delivery by Federal Express. Pursuant to that practice, envelopes placed for collection at designated locations during designated hours are delivered to Federal Express with a fully completed air bill, under which all delivery charges are paid by McDermott Will & Emery LLP, that same day in the ordinary course of business.

Executed on February 9, 2010 at Irvine, California.

/s/ Terri Carman
TERRI CARMAN

ORC 475674-1.072750.0035